IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

APPEAL NO.334 OF 1997
IN
WRIT PETITION NO.2446 OF 1996

Association of Engineering Workers
having its office at 252, Janata
Colony, Ramnarayan Narkar Marg,
Ghatkopar (East), Mumbai 400 077 Appellant
(original Petitioner)

vs.

1. Shri V.K.Date,
Commissioner of Labour,
(Maharashtra), Office of
the Commissioner of Labour
Commerce Centre, Tardeo,
Mumbai 400 034.

2. Shri D.P. Pagar,
Deputy Commissioner of Labour

3. Shri G.S. Bhisure,
Asst. Commissioner of Labour
(Conciliation Officer),

Nos. 2 and 3 having their office
at Commerce Centre, Tardeo,
Mumbai 400 034.

4. State of Maharashtra,
through the Secretary,
Industries, Energy & Labour
Department, Mantralaya,
Mumbai 400 032.

5. M/s.Premier Automobiles Limited,
Lal Bahadur Shastri Marg,
Kurla, Mumbai 400 070. Respondents
(original Respondents)

Mr.N.M.Ganguli for the appellant.

Ms.S.M.Dandekar, A.G.P. for the respondent no.4.

Mr.Santosh Shetty i/b.M/s.Shetty & Chitale for the
respondent no.5.

CORAM : R.M. LODHA &
D.G. KARNIK, JJ.

DATED : 15th December 2005

ORAL JUDGMENT (Per R.M.Lodha,J.)

Association of Engineering Workers (for short, 'the Union') filed the writ petition before this Court praying therein that direction be issued to the Assistant Commissioner of Labour (Conciliation Officer) to initiate conciliation proceedings with regard to the demand raised by the Union for lifting the illegal lockout and for payment during the period of lockout and in case of failure, direction to the State Government to refer the industrial dispute for adjudication. In the writ petition, the Commissioner of Labour, Deputy Commissioner of Labour, Assistant Commissioner of Labour, State of Maharashtra and M/s.Premier Automobiles Limited were impleaded as respondents 1 to 5 respectively. The writ petition came to be dismissed on 6th January, 1997 by eight word order, "Since ULP Act invoked, writ petition is rejected". Aggrieved thereby, the Union has preferred this appeal.

2. On 5th June, 1996, the respondent no.5 M/s.Premier Automobiles Limited (for short, "the employer") declared lockout. The Union raised the demand for lifting the lockout on 7th June, 1996. On 19th June, 1996 the Union filed a Reference before the Labour Court, Mumbai in

terms of Section 25(2) of the Maharashtra Recognition of Trade Unions & Prevention of Unfair Labour Practices Act, 1971 (for short, "MRTU & PULP Act"). The lockout was lifted by the employer on 25th November, 1996. On the demand raised by the Union and intervention letter addressed to the Deputy Commissioner of Labour dated 7th June, 1996, the Assistant Commissioner of Labour communicated its decision of not proposing to intervene in the dispute vide his letter dated 18th October, 1996 to the Union. Three reasons were set out for not intervening in the said dispute; (one)that the legality of the lockout effected by the employer with effect from 5th June, 1996 is a subject matter pending before 6th Labour Court in complaint (ULP) No.16/1996 under MRTU & PULP Act; (two)that the workers who are excluded from the notice lockout resorted to strike with effect from 5th June 1996 and (three)that there was bar under Section 59 of the MRTU & PULP Act in proceeding under Industrial Disputes Act, 1947 in view of the pending reference. Upon receipt of the communication dated 18th October, 1996, as indicated above, the writ petition was filed by the Union before this Court on 10th December 1996.

3. Mr.N.M.Ganguli, the learned counsel for the Union strenuously urged that unjustiafiability of lockout was not (and could not be) the subject matter of Reference

under Section 25(2) of the MRTU & PULP Act and, therefore, bar under Section 59 was not attracted. He also submitted that even otherwise bar contemplated under Section 59 is with regard to the complaint under Section 28 and not for the Reference application under Section 25(2) of the MRTU & PULP Act.

4. Section 25 provides for Reference to Labour Court for declaration whether strike or lock-out is illegal or not. It provides thus:

> **"25. Reference of Labour Court for declaration whether strike or lock-out is illegal:-** (1) Where the employees in any undertaking have proposed to go on strike or have commenced a strike, the State Government or the employer of the undertaking may make a reference to the Labour Court for a declaration that such strike is illegal.
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> (2) Where the employer of any undertaking has proposed a lock-out or has commenced a lock-out; the State Government or the recognised union or, where there is no recognised union, any other union of the employees in the undertaking may make a reference to the Labour Court for a declaration whether such lock-out will be illegal.
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> Explanation.- For the purposes of this section recognised union includes a representative union under the Bombay Act.
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> (3) No declaration shall be made under this section, save in the open Court.
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> (4) The declaration made under this section, shall be recognised as binding, and shall be followed in all proceeding under this Act.
>
> (5) Where any strike or lock-out declared to be illegal under this section is withdrawn

within forty-eight hours of such declaration, such strike or lock-out shall not, for the purposes of this Act, be deemed to be illegal under this Act."

5. Section 59 bars the proceedings under Industrial Disputes Act or Bombay Industrial Relations Act, if any proceeding in respect of the matter falling under MRTU & PULP Act is instituted under that Act. Section 59 reads thus:

"**59. Bar of proceedings under Bombay or Central Act:-** If any proceeding in respect of any matter falling within the purview of this Act is instituted under this Act, then no proceeding shall at any time be entertained by any authority in respect of that matter under the Central Act or, as the case may be, the Bombay Act; and if any proceeding in respect of any matter within the purview of this Act is instituted under the Central Act, or, as the case may be, the Bombay Act, then no proceeding shall at any time be entertained by the Industrial or Labour Court under this Act."

6. That on 19th June, 1996 the Union made the Reference to the Labour Court for declaration that the lock-out effected by the employer on 5th June 1996 under Section 25(2) was illegal is not in dispute. Such Reference under Section 25(2) is a proceeding in respect of the matter within the purview of MRTU & PULP Act is beyond doubt and we are unable to accept the submission of Mr.N.M.Ganguli that proceeding contemplated under Section 59 is the proceeding by way of complaint under section 28 of the MRTU & PULP Act. The expression

'proceeding' in respect of the matter within the purview of MRTU & PULP Act cannot be read to exclude the reference under Section 25(2) of that Act. That would mean excluding something from the provision which it does not exclude. The object of Section 59 is to prohibit duplicating the proceedings in respect of the matter which falls within the purview of MRTU & PULP Act. Though, in the demand, the Union used the expression, "unjustified lockout", yet it appears that it was loosely used for illegal lockout. This is apparent from the fact that prayer made in the writ petition is that direction be issued to the Assistant Commissioner of Labour (Conciliation Officer) to initiate conciliation proceedings with regard to the demand raised by the Union for lifting of **illegal lockout** (emphasis supplied by us). The declaration of lockout illegal or otherwise on the Reference made by the Union is a matter within the purview of MRTU & PULP Act and during the pendency of that Reference, Section 59 bars the initiation of proceedings under Industrial Disputes Act. In the circumstances, the Assistant Commissioner of Labour cannot be said to have erred in declining to intervene in the matter because of the pendency of the proceedings before the 6th Labour Court under MRTU & PULP Act.

7. The Reference under Section 25(2) is a matter

falling within the purview of the MRTU & PULP Act and the pendency of such reference is a clear bar under Section 59 for an authority to entertain any proceeding under Industrial Disputes Act.

8. We are, thus, satisfied that the Union was not entitled to any relief in the writ petition and rejection thereof by the learned Single Judge cannot be faulted.

9. Appeal is, accordingly, dismissed with no order as to costs.

(R. M. LODHA, J.)

(D. G. KARNIK, J.)